

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

**GINGER WILLIAMS and
RICHARD WILLIAMS**

PLAINTIFFS

V.

NO. 3:21-CV-60-DMB-JMV

**FREDERICK DRAYTON;
and JOHN DOE(S) 1-5**

DEFENDANTS

ORDER

On October 11, 2021, Frederick Drayton filed a “Suggestion of Death” indicating that Richard Williams, one of the two plaintiffs in this case, died on May 12, 2021. Doc. #22.

Federal Rule of Civil Procedure 25(a)(1) provides:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Under Rule 25(a)(1), a court has discretion to dismiss with or without prejudice. *Zanowick v. Baxter Healthcare Corp.*, 850 F.3d 1090, 1095 (9th Cir. 2017).

Here, because no motion to substitute was filed and the deadline to seek substitution has passed, Richard’s claims must be dismissed. And because Ginger Williams, Richard’s widow and co-plaintiff, has represented that Richard “left no estate and [she] has no plans to open the decedent’s estate,”¹ the Court concludes dismissal with prejudice is proper. Accordingly, all of Richard’s claims in this case are **DISMISSED with prejudice**.

¹ Doc. #17 at 1. “Generally unless the estate of a deceased party has been distributed at the time of the making of the motion for substitution, the proper party for substitution would be either the executor or administrator of the estate of the deceased.” *Rowland v. GGNSC Ripley, LLC*, No. 3:13-CV-11, 2015 WL 5197565, at *2 (N.D. Miss. Sept. 4, 2015) (cleaned up).

SO ORDERED, this 28th day of January, 2022.

/s/Debra M. Brown
UNITED STATES DISTRICT JUDGE